

context

M E D I A

April 7, 1999

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Dear Ted,

I have received your letter of March 27. First, I must say that I am hoping that Bonnie had his reasons for deciding against the 2255 at such a compromising time. There is an embargo on information here, so I can't say anything for certain, and it is best that I do not get too involved with this (*see email letter to RJB*). My role as your publisher is in itself a large responsibility.

I don't want to see you get hurt (which is also Bonnie's position, *i.e.*, he apparently thinks that the motion would backfire). From what I have been able to discover, Bonnie believes that he has made the right decision. I asked him pointedly if his change of heart had anything to do with his recent visit with Denvir and Clarke. This annoyed him. I am not sure if the annoyance was due to the implication that he had been hoodwinked, that I was saying something that lacked decorum, or that I was quite simply out of my depth (the last two are undoubtedly true). Again, I am your publisher, but I am also your friend. There is little I can do, but I am concerned.

(Item #45, p. 1, ¶ 1-6) I have not developed a new position with regard to potential defamation suits brought against you or Context Books. They are indeed hard to win, and I doubt that there are any real problems on this front. My lawyers have to clear the title with my insurer, and that is why they are being persnickety. The solutions you have given in this most recent letter seem right to me, and I have forwarded them to Miller and Korzenik. I hope that they are at least in some cases unneeded. Miller understands that I am very serious with regard to the integrity of your book, and he is being paid to realize the goals that you have delegated for me to achieve. It is not my impression that there *are* serious libel problems. I will now answer your comments and queries on an item by item basis as far as I am able without Miller's reaction, which should be in by Thursday.

(p.2, ¶ 3) I was perhaps unclear in my penultimate letter: Murphy can indeed be described as "prissy," since said description is the result of your personal opinion. I had mentioned that Miller tends to be risk-averse. This is an example of that tendency. But he is no longer insisting on this particular amendment, or any other changes of a similar stripe.

(end of p. 2, ¶ 4 -- p. 4, ¶ 1) I am not entirely opposed to visiting your mother or your brother. I think it is problematic *ad absurdum* to visit unannounced. I said this in a previous letter, and my reasoning remains the same: Patrik and Bisceglie would not hesitate to go to the press and turn it against me, and they might go so far as to sue me on some obscure point (when they might not have otherwise). If you were agreeable to the idea of an *announced* visit with all three, and you trusted my ability to get to the truth of the matter, I would be willing to go up and try. I think they might be curious to meet me, and would perhaps try to "indoctrinate" me with their ideas about you. It could make for an interesting and informative encounter. I feel up to the task as I have outlined it, and do not believe that they are so talented at hiding the truth that I would not be able to detect it here and there during a conversation. >

We are still investigating the possibility of suing your brother for copyright infringement and invasion of privacy. I should hear back from Miller about the libel issue soon (*re.*, suing your brother) and will pass on the verdict when I do.

Glaberson's article about *TvL* did a few things that I wanted it to do: it established a tone for the reception of your book. That tone was acceptable, but not ideal or accurate. It also prompted a response from your family. This was one of my main objectives. Both the lawyer and LP made statements. Both of them claimed you were mentally ill. My logic: if they *publicly* claim you are mentally ill, then it should not matter to them what you say about them. This is the problem we have been fighting against all along with regard to your family and in the larger context of your values and ideas. I believe they are thinking of using your book to their advantage (*i.e.*, your book will be publicity for D's book). What they may not realize is that you have a committed publisher. There will be time for revisiting anything they may publish, for instance in your autobiography. Regardless, this is why I think it may be worth simply requesting permission. I can be diplomatic, and I believe there is a chance for success. >

I also think, gimmick or no, that D will want to appear noble and dignified and thus will agree to leave your book alone *because* of the escrow account. Of course the escrow account is a legal necessity for existing claims resulting from wrongful death decisions. But he need not know that, and I doubt he does. Again, my guess is that he will not take action. Linda Patrik's interview in the *New York Post* demonstrates the approach they will no doubt take: They will say you are mentally ill and that nothing you say in the book is to be trusted. If this is indeed their strategy, then they will not take action. But guesswork won't work here. We need to create a semblance of predictability on the negative side with regard to lawsuits. >

Summation: It is my assumption that D will want to use correspondence that he has received from you in his projected book. Thus I suggest that we find out whether or not this is the case. We stand a good chance making a trade of rights if it is. Then we have recourse to your other idea: We can offer him copies of his letters to you in exchange for the rights to his correspondence. I only wonder if he is sufficiently materialistic to make what to me seems a bad trade. Questions: Won't he have access to his letters when he buys a copy of your book? How can he prove copyright infringement without copies of the letters? How can fair-use be >

determined without knowing the length of those letters? I suppose he can gain his letters through discovery. I just called Miller (this letter must go out at 4 and it is 20 to) and he thinks they would be able to get their hands on Ds letters through discovery. He also indicated that acquiring permission should be possible, but he did not elaborate. He does not say things that he can't back up. Between fair-use and whatever strategy we settle on to acquire permission (or circumvent the necessity) I am sure there will be no impasses.

Your concerns regarding unreliability are all going to be satisfied and the language you provided is per usual an excellent solution. I hope it will not be necessary. I followed your argument (the *reductio ad absurdum*) and agree with you completely. Again, no impasse here, and I hope that the language you have provided will not be necessary after Miller and I meet again.

The discovery issue with regard to reporters is another story. The language you have provided may be necessary, since whomever among the reporters indicated will be able to access much more than the few documents indicated by you — they could claim that evidence supporting their claims about you might exist elsewhere in your correspondence, journals, etc. It is best to be careful with journalists. Therefore, the language you have supplied may be necessary. Miller did not tell me what his solution on this point would be. To “knowingly make a false statement” is the same thing as lying. So, that will not do the trick.

I agree with you entirely about the changing of facts to disguise events. Your objections and explanations are completely valid. I believe that changing abbreviations, if necessary, should suffice. When I spoke to Miller just now he said that your suggestions were good and that he could “work with them.” Again, he knows that I am serious about the direction that he should proceed in a “hands off” manner.

The list you have provided is outstanding, and I stand in awe of your powers of recollection. You can quote me. Simply amazing.

I have *no* intention of showing the manuscript of *Truth versus Lies* to anyone until the day it is published, so you can be sure that your family will not have access.

(p.8, ¶ 4) Eccles: I have a hard time understanding disorders such as the bi-polar one you mention. I do not doubt that they exist. But I often think it is a question of sensibility: some people, to their detriment, simply have too much.

(¶ 5) I haven't spoken to Joy for about a week, I owe her a call. She is a person of considerable intelligence and heart. I like her very much.

(¶ 6) Thank you for telling me about the Holdman declaration with regard to Waits. It's infuriating to think that someone betrayed your confidence, but I suppose it is possible. I hope that he's full of hot air and has not seen the manuscript.

Bonnie just called to say that he had talked to Denvir and Clarke, and he reported that you sounded upbeat in your conversation with them (I have this third-hand). He offered to send this correspondence with his mail to you. I am glad to hear that you are working toward a solution of the problem, and hope very much that this is the case.

I am thinking about you often, and wish for the best.

Yours,
Dan.

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Subject: reflections**Date:** Tue, 06 Apr 1999 14:21:15 -0400**From:** Context Books <beau@contextbooks.com>**To:** Richard Bonnie <rbonnie@law1.law.virginia.edu>

Richard:

Thank you for your letter. I can imagine the distress that the current situation must be causing you, and apologize for the manner in which I may have compounded it during our telephone conversation. I am now of the impression that the decisions with regard to filing the motion occupy a gray area that lies far beyond my own powers of interpretation, since it seems that there are considerations to which either I have not been privy or do not have the technical experience to understand. I also understand the barriers of confidentiality. Thus I am not equipped to make an informed judgment here, and I am now also of the opinion that it is not my place to do so. >

The inference I made regarding D + C was wholly my invention. Michael has been very politic about this matter. It is my understanding that he too believes Ted should abandon the motion. I do not know what he will do with regard to Ted's current plan to file pro se, since he has not told me. I have asked to be informed as far as that is necessary to the proper execution of my responsibility as his publisher, but again that I feel like I am out of my depth.

The problems here are not unworthy of insomniac lucubration. I slept this weekend not at all. I understand that this could be very difficult for you. I imagine Ted hasn't slept much either.

Be well.

Beau